IN THE COURT OF APPEALS OF IOWA

No. 0-257 / 09-1577
Filed June 30, 2010

RUSSEL D. BAKER and
VICKI D. BAKER, Husband and Wife,
Plaintiffs-Appellees,

vs.

BARBARA McCRACKEN,
Defendant-Appellant,

and

WELLS FARGO BANK, N.A.,
Trustee for BARBARA J. ALBRECHT
REVOCABLE TRUST, and CRIAG
V. SCHRADER, Individually,
Jointly and Severally
Defendants.

Appeal from the Iowa District Court for Polk County, Donna Paulsen, Judge.

Barbara McCracken appeals from the district court's denial of her application for attorney fees and costs. **AFFIRMED.**

Mark D. Sherinian and Melissa C. Hasso of Sherinian & Walker Law Firm, West Des Moines, for appellant.

James R. Cook, West Des Moines, for appellees.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

Russel and Vicki Baker filed this action alleging breach of the statutory requirements of Iowa Code chapter 558A (2007) (real estate disclosures), breach of contract, and fraud with respect to their purchase of Barbara McCracken's townhome. The district court entered summary judgment in favor of defendants,[1] who thereafter sought an award of attorney fees pursuant to Iowa Rules of Civil Procedure 1.517(3)[2] and 1.413(1).[3] The district court denied the application, ruling in part:

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[1] Barbara McCracken is the only appellant; the other defendants are not before this court.

[2] Rule 1.517(3) provides:

> *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 1.510, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may move for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds any of the following:
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> *a.* The request was held objectionable pursuant to rule 1.510.
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> *b.* The admission sought was of no substantial importance.
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> *c.* The party failing to admit had reasonable grounds to believe that the party might prevail on the matter.
>
> *d.* There was other good reason for the failure to admit.

See generally Koegel v. R Motors, Inc., 448 N.W.2d 452, 456 (Iowa 1989) (noting that matters denied might ultimately found to be true does not mean they were unreasonably denied).

[3] Rule 1.413(1) provides:

> Pleadings need not be verified unless special statutes so require . . . . Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation. . . . If a motion, pleading, or other paper is signed in violation of this rule, the court, . . . shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the

> This court did hear and decide the Summary Judgment Motions of the Defendants' and did sustain such Motions. This Court, however, struggled with that Ruling in that the Defendants were at fault in not providing the Real Estate Disclosure Statement to the buyers, specifically referencing paragraph #7 of the standard from for disclosure.
>
> The fact that this Court sustained the Motion for Summary Judgment is far from a finding that the initial filing was frivolous. . . .
>
> While the court believes that the answers to Requests for Admissions could have been better, more clearly written answers would not have changed the suit. . . .
>
> For all the above reasons, the court finds that there is no basis for an award of attorney fees and costs as a sanction for the alleged violations of the Iowa Rules of Civil Procedure, or for the alleged frivolous finding of the lawsuit initially.

Barbara McCracken appeals from the denial of her application for attorney fees and costs.

We review the trial court's orders regarding sanctions for abuse of discretion. *Slade v. M.LE. Inv. Co.,* 566 N.W.2d 503, 505 (Iowa 1997). Whether a violation has occurred is a determination for the court, involving matters of judgment and degree. *Mathias v. Glandon*, 448 N.W.2d 443, 445-46 (Iowa 1989). The district court's findings of fact are binding on us if supported by substantial evidence. *Barnhill v. Iowa Dist. Ct.,* 765 N.W.2d 267, 272 (Iowa 2009).

We conclude the district court did not abuse its discretion in denying the defendant's application for attorney fees under Iowa Rule of Civil Procedure 1.413 for the reasons stated by the district court.

> filing of the motion, pleading, or other paper, including a reasonable attorney fee. The signature of a party shall impose a similar obligation on such party.

See generally Harris v. Iowa Dist. Ct., 570 N.W.2d 772, 776-77 (Iowa Ct. App. 1997) (discussing reasonableness of pre-filing inquiry under formerly numbered rule 80(a)).

In respect to the application for sanctions under rule 1.517(3), the district court concluded that because the parties could not settle this matter, depositions would still have been taken, and even if an award was proper, the amount of attorney fees could not be determined.

McCracken contends the court erred in denying the application for sanctions alleging that if the Bakers had accurately answered three of the nineteen requests for admissions, their depositions would have been unnecessary. Although the Bakers objected to three requests for admissions, they provided a written explanation to the three requests. Their objections were on the basis that the questions were compound and could not be answered with a single response. McCracken takes exception to the written explanations provided and contends the failure to admit created the necessity to depose the Bakers.

When faced with an application for expenses including attorney fees pursuant to rule 1.517(3), the district court has a duty to make findings in regards to each requested admission. *Koegel*, 448 N.W.2d at 458. If the court concludes that the party requesting the admissions has proven the truth of the matter at trial or in summary judgment proceedings, to avoid the imposition of expenses, the burden of proof shifts to the opposing party to justify the failure to admit under one of the four exceptions in rule 1.517(3). *Id*.; *see also* Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 508 (1986-87). To preserve error on the court's ruling on an application for expenses under rule 1.517(3), the requesting party must sufficiently alert the court of its alleged error. *See Koegel*, 448 N.W.2d at 458 (finding the filing of a posttrial

motion asking the court for specific rulings as to each requested admission was sufficient to preserve error).

Here, the district court failed to identify its findings in regard to each requested admission, including whether the matter was proven in the summary judgment proceedings and, if so, whether the Bakers satisfied any of the four exceptions. Iowa R. Civ. P. 1.517(3). Unfortunately, McCracken failed to alert the district court of this duty by a rule 1.904(2) motion. We thus conclude that McCracken has failed to preserve error.

We affirm. Costs are assessed to appellant.

AFFIRMED.